IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re Application of	Confirmation No.: 6826
Sun Jin PARK	Group Art Unit: 2675
Serial No.: 09/853,668	Examiner: Chanh Nguyen
Filed: 5/14/2001	**Customer No.: 34610**

For: METHOD AND APPARATUS FOR ADJUSTING A BRIGHTNESS OF A
DISPLAY SCREEN

TRANSMITTAL OF PETITION REQUESTING REJOINDER AND CONSIDERATION OF IMPROPERLY WITHDRAWN CLAIMS

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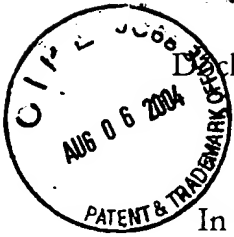
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Technology Center 2600

Sir:

Submitted herewith in triplicate is a Petition Requesting Rejoinder and Consideration of Improperly Withdrawn Claims. Enclosed is Check No. 12554 for the Petition fee of $130.00.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
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Date: August 6, 2004

Docket No.: P-0216

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Sun Jin PARK

Serial No.: 09/853,668

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EXPEDITED PROCEDURE UNDER 37 C.F.R. §1.116

Group Art Unit: 2675

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Sir:

Claims 1-62 are pending in the application. Claims 1-13, 19-23, 29-31, 38-42, 48-54, 57 and 58 have been withdrawn by the Examiner.

The Office Action dated May 20, 2003 contained an Election of Species Requirement alleging that the application contains claims directed to patentably distinct species as follows:

Species A: Species of Fig. 2A

Species B: Species of Fig. 2B

Species C: Species of Fig. 2C

Species D: Species of Fig. 2D

Species E: Species of Fig. 2E

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Species F: Species of Fig. 2F

In the Reply to Election Requirement filed June 19, 2003, Applicant elected Species A (Species of Figure 2A), with traverse, for prosecution in the application, and indicated that claims 1-47 read on the species of Figure 2A, providing detailed arguments. However, in the first Office Action on the merits dated September 12, 2003, the Examiner withdrew from consideration claims 1-13, 19-23, 29-31, 38-42 and 48-49.

In the Amendment filed December 12, 2003, Applicant's representative again traversed the Election of Species requirement and presented arguments that claims 1, 6, 11-18, 24, 30-37, 43, and 49, as well as added claims 50-62 read on the species of Fig. 2A. The December 12, 2003 Amendment further noted that these claims are also generic to the species of Figs. 2B-2F.

In the Final Office Action dated February 23, 2004, the Examiner refused to rejoin and consider the improperly withdrawn claims. Applicant's representative conducted a personal interview with the Examiner on May 4, 2004, in which the Examiner indicated he would review the Election of Species Requirement and withdrawn claims. Applicant filed a Request for Reconsideration on May 20, 2004 again presenting arguments why claims 1, 6, 11-18, 24, 30-37, 43, 49, and 50-62 read on the species of Fig. 2A, and further that these claims are generic to the species of Figs. 2B-2F. The Examiner then issued an Advisory Action dated June 7, 2004 again refusing to rejoin and consider the improperly withdrawn claims. It is noted that this Petition has been filed within two months of the June 7, 2004 Advisory Action.

Applicant respectfully submits that claims 1, 6, 11-18, 24, 30-37, 43, 49, and 50-62 read on the elected species of Fig. 2A.- These claims are also generic to the species of Figures 2B-2F.

More particularly, Fig. 2A of the present application is a flow chart illustrating a method according to an embodiment of the invention for adjusting a brightness of a display screen. Fig. 2A is discussed in, for example, paragraphs 29-31 of the present application. Fig. 2A includes the step of determining whether display related processes are running, in step S24. As set forth in paragraph 29, "'[d]isplay related processes' may include any display intensive use of the computer where the user is watching a display screen of the apparatus." Paragraph 29 further states that "[d]isplay related process may include watching a movie on the display screen, such as by playing a CD-ROM (Compact Disc Read Only Memory), DVD (Digital Video Disc), MPEG (Moving Picture Expert Group) file, playing a video file, or similar type functions." Paragraph 31 discusses step S24 and states that "to check for display usage, the CPU executes instructions to determine whether display related processes are running in the machine S24," and further states that "such display related processes can be indicative of intensive display use despite no user signal inputs, such as watching a movie or viewing an internet broadcast."

Independent claim 1 recites a method for adjusting a brightness of a display screen of a system, the method comprising determining whether there are user signal inputs, switching the system into an IDLE mode if there are no user signal inputs, determining processor unit usage indicative of whether certain display related processes are running when in the IDLE mode, and adjusting the brightness of the display screen when in the IDLE mode based on processor unit usage. Independent claim 1 was amended during prosecution to clarify that processor unit usage indicative of whether certain display related processes are running is determined. Because claim 1 clearly and unambiguously recites a method that includes a step of determining whether certain

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"display related processes are running," claim 1 clearly reads on the method illustrated in elected Fig. 2A.

The step of determining processor unit usage may be accomplished by, but is not limited to, determining whether display related processes are running, or more specifically by determining if the CPU usage is greater than a reference value (see Fig. 2B; see also claim 5), analyzing key words present in the current processor (see Fig. 2C; see also claim 4), determining whether certain memory devices are in use (see Fig. 2D), determining whether certain read/write devices are in use (see Fig. 2E; see also claims 7-10), or determining whether a modem is in use (see Fig. 2F). Thus, independent claim 1 also reads on the species of Figs. 2B-2F. The fact that claim 1 reads on these other Figures does not negate the fact that it also reads on Fig. 2A.
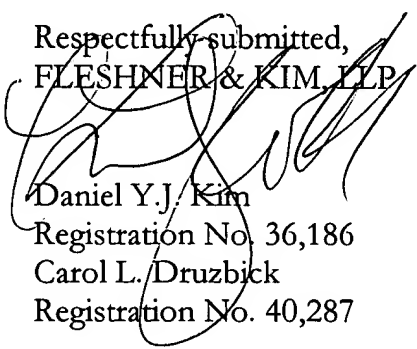
Independent claim 13 recites a method for reducing electrical power consumed by a processor unit controlled display screen, the method comprising determining processor unit activity indicative of whether certain display related processes are running, and dimming a brightness of the display screen when the processor unit activity falls below a minimum threshold. Thus, claim 13 also reads on the species of Fig. 2A. In fact, claim 13 is generic to all of the species of Figs. 2A-2F. Independent claim 31 recites an apparatus for reducing electrical power consumed by a processor unit controlled display screen, the apparatus comprising means for determining processor unit activity indicative of whether certain display related processes are running, and means for dimming a brightness of the display screen when the processor unit activity falls below a minimum threshold. Thus, claim 31 also reads on the species of Fig. 2A, and is generic to all of the species of Figs. 2A-2F. Independent claims 32-33, as well as

dependent claims 6, 11-12, 14-18, 24, 30, 34-37, 43, 49, and 50-62 also read on the Species of

Fig. 2A and are also generic. Accordingly, at least claims 1, 6, 11-13, 30-31, 49, 50-54, and 57-58

should be rejoined (with claims 14-18, 24-28, 32-37, 43-47, 55-56 and 59-62) and considered by

the Examiner.

As explained above, each of the individual methods shown in Figs. 2B-2F are different

ways of determining if display related processes are running. If these had been mutually

exclusive ways of making the determination, then an Election of Species Requirement as

between Figs. 2B-2F would have been appropriate. However, the fact that a single claim could

recite two or more of the methods shown in Figs. 2B-2F provides clear evidence that the

methods are not mutually exclusive. Because the alternatives presented in Figs. 2B-2F can be

used together, and are not mutually exclusive, an Election Requirement is improper.

Accordingly, this petition requests rejoinder and consideration of the improperly

withdrawn claims.

Respectfully submitted,
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